



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

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CERTIFIED MAIL

March 10, 2010

Mr. William Thibeault
New Ventures Associates, LLC
85-87 Boston Street
Everett, Massachusetts 02149

Re: NEWBURYPORT – Solid Waste/COR
Crow Lane Landfill
FMF # 39545
**Repair of FML & Wells – Response to
Nysten letter of 3/5/10**

Richard A. Nysten Jr, Attorney at Law
Lynch, DeSimone & Nysten, LLP
12 Post Office Square
Boston, MA 02109

Dear Mr. Thibeault and Mr. Nysten:

This letter is in response to the March 5, 2010 letter from New Ventures Associates, LLC ("New Ventures") to the Massachusetts Department of Environmental Protection ("MassDEP or "the Department"). New Ventures' letter was sent in response to MassDEP's March 3, 2010 letter to New Ventures pursuant to paragraph 27 of the Settlement Agreement and Final Judgment in *Commonwealth v. New Ventures Associates, LLC*, Suffolk Superior Court C.A. 06-0790 C, as amended by Orders of the court on May 27, 2009 and October 7, 2009 (the "Final Judgment") for completing closure of the Crow Lane Landfill (the "Landfill") in Newburyport. In this March 3, 2010 letter, MassDEP provided notice that, because New Ventures had failed to repair damage caused by the windstorm on the evening of February 25, 2010 or early morning of February 26, 2010 to the Landfill's impermeable flexible membrane liner cap (the "FML") and gas extraction system, MassDEP may access the Landfill at any time with its contractor(s) to take the actions necessary to repair the damage.

New Ventures' March 5th response states in part that, "[b]ased upon New Ventures' response, its action plan and the absence of any public health threat, the Department does not have the authority to step in at this time for the purposes of conducting repair under Paragraph 27." New Ventures is mistaken. Paragraph 27 of the Final Judgment gives the Department clear and unambiguous authority to access the Landfill to address such conditions as indicated in the italicized text below. Specifically, Paragraph 27 states:

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD# 866-539-7622 or 617-574-6868.
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“The Department and its contractors shall have the right to access the Site at any time and without notice to: respond to odor complaints; conduct inspections; take air quality readings, leachate samples, or other samples; secure the continued installation and full operation of the LFG Pretreatment System in the event that the LFG Pretreatment System has been removed, disabled, or otherwise fails, or if New Ventures has abandoned or stopped operating the LFG Pretreatment System; secure the continued installation and full operation of the enclosed flare, including, without limitation, all piping, gas collection systems, propane tanks, and other components required to operate the enclosed flare; and otherwise inspect the Site or monitor activity to ensure compliance with all terms, conditions, and requirements of this Final Judgment and the Settlement Agreement, as well as with any other applicable administrative enforcement orders issued by the Department. ... The Department and its contractors shall also, within seventy-two (72) hours of notice by the Department, have the right to access the Site at any time to take actions necessary to: (i) assure that the landfill gas system, including, without limitation, the LFG Pre-treatment System, the enclosed flare, and gas collection system, is operating in full compliance with the performance standards in Appendix B to the Settlement Agreement; (ii) patch, repair, or extrusion weld any FML rips, tears, seam openings or other damage; (iii) cover, patch, or otherwise mitigate any breakouts of hydrogen sulfide or other Landfill gases from the Landfill surface; or (iv) place cover over Active or Inactive Areas of the Landfill in order to assure compliance with the requirements of Sections B and C of Appendix C to the Settlement Agreement, Landfill Cover Protocol. The Department also retains all rights of access to the Site under applicable state and federal law.” Emphasis added.

As you are aware, the storm damaged approximately 1.5 acres of FML, exposing the underlying permeable geotextile gas vent layer and components of the landfill gas extraction system, including, without limitation, three (3) gas extraction wells that were rendered inoperable. Although New Ventures attempted to take some initial, temporary measures to secure the remaining damaged FML, New Ventures has not replaced or repaired the 1.5 acres of lost or damaged FML or taken any steps to repair the damaged and inoperable gas extraction wells. Moreover, as of the date of this letter, New Ventures has not informed MassDEP that it has contracted for or scheduled the repair of the damaged FML and gas extraction wells.

The FML liner must be repaired as soon as possible to prevent, without limitation, (1) the release of fugitive emissions of noxious and odiferous landfill gas from the surface of the Landfill; and (2) infiltration of precipitation into the Landfill and the creation and release of noxious and odiferous landfill gases and leachate. Such releases of landfill gas are, without limitation, violations of the Air Quality Regulations, 310 CMR 7.00 and the Solid Waste Regulations, 310 CMR 19.000 and are a threat to the public health, welfare, safety and the environment. It is imperative that New Ventures properly repair the FML and the gas extraction wells without delay and return to compliance with the Final Judgment.

Accordingly, MassDEP reserves the right to enter the Landfill and to proceed with the necessary repairs pursuant to the March 3, 2010 notice to New Ventures issued pursuant to paragraph 27 of the Final Judgment. In addition, pursuant to paragraph 6(a) of the Corrective Action Standby Trust Agreement, MassDEP reserves the right to draw funds against the Trust Fund Property for

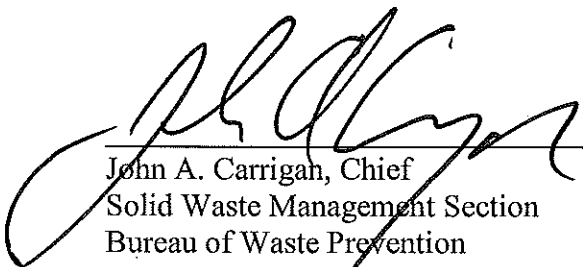
any actions conducted by MassDEP pursuant to paragraph 27 of the Final Judgment upon notification to the Trustee as required by the Trust Agreement and 310 C.M.R. 19.051.

You are reminded that MassDEP notified New Ventures in a letter dated March 5, 2010 that, pursuant to Paragraph 6(a) of the Standby Trust Agreement, the Department intends to send written notification to the Trustee of New Ventures' failure to conduct the foregoing actions. Such notice shall, at a minimum, instruct the Trustee that the Department is securing exclusive direction and control over the transfer, use and disbursement of the security for the purpose of effecting the repairs to the FML and gas extraction wells including but not limited to directing the holder of the financial assurance mechanism to reimburse the Department for actions it or its agents has performed to conduct of the foregoing actions.

This notice is provided by email pursuant to Section 26 of the Final Judgment and by certified mail.

Feel free to contact me by telephone at (978) 694-3299, if you have any questions regarding this notice.

Sincerely,



John A. Carrigan, Chief
Solid Waste Management Section
Bureau of Waste Prevention

CERTIFIED MAIL: 7005 1820 0007 7732 9844 (Thibeault)

7005 1820 0007 7732 9813 (Nylon)

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